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COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 114th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 May 1992, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Exchange of views on the question of a draft optional protocol to the Convention (E/CN.4/1991/66; CAT/C/SR.80)

1. A video film showing the condition and testimony of three victims of torture was projected.

2. The CHAIRMAN invited the Committee to consider further the draft optional protocol contained in document E/CN.4/1991/66.

3. Mr. SORENSEN said that the scenes shown in the film just projected were real and constituted a stark reminder of the situations which bodies such as the Committee were designed to investigate and instruments such as the draft optional protocol to prevent.

4. Replying to a question by Mr. MIKHAILOV, he said that the rules of procedure of the European Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had been published in English and French and would be made available to the Committee against Torture. The most recent account of the European Committee's activity was contained in its second annual report, published that week and also available in English and French; he recommended that the first report, too, should be studied.

5. Mr. BURNS said that the basic documentation made available to the Committee for the discussion of the draft optional protocol to the Convention consisted of the text contained in document E/CN.4/1991/66, and a document which reflected NGOs' recommendations in support of such a text, together with the summary record of the Committee's discussions on that question on 25 April 1991 (CAT/C/SR.80). He recalled that the Committee had agreed in principle that an optional protocol was desirable, but had expressed concern about how it should be implemented, bearing in mind not only the Committee's own work but also the various regional arrangements. A distinction should be noted between the type of jurisdiction proposed and the purely investigative type exercised by the Committee under article 20 of the Convention, which involved the prior consent of the State party concerned. The optional protocol would provide a much broader jurisdiction, similar to that exercised under the European model, including the establishment of a subcommittee of the Committee against Torture, empowered to investigate any type of institution, in a State party, in which persons were being held against their will. The proposed qualifications for membership of the subcommittee included a reference to an investigative background - something not mentioned in the Convention. Measures to avoid confusion in relation to action at the regional level or to the work of ICRC were set forth in article 9 of the draft.

6. He himself had difficulty with the text of articles 14 and 15, although he appreciated that the chief concern was to ensure confidentiality. Article 14 provided, in paragraph 1, that the subcommittee should draw up a report on the facts found during a mission, transmit the report, including any

recommendations considered necessary, to the State party and consult that State party; according to paragraph 2, if the State party failed to cooperate, the Committee against Torture might, under certain circumstances, make a public statement or publish the report of the subcommittee at the latter's request. Thus, only if the report had been submitted to the Committee against Torture would the latter take cognizance of it. He had difficulty with the implication that a subcommittee would not necessarily be reporting to the Committee in every case, and intended to propose an appropriate amendment to the text.

7. He had no difficulty with paragraphs 3 and 4 of that article, but he felt some concern about article 15, paragraph 1, which introduced a discretionary element. As a member of the Committee against Torture, he regarded the confidentiality of the article 20 procedure as paramount, of course. But he wondered whether a situation could arise in which the Committee, applying its article 20 procedure to a State party already under investigation by the subcommittee, would necessarily be able to obtain the latter's information. In the case of action by the Committee pursuant to article 19, it was right that any confidential information in the subcommittee's possession should remain so; but since the article 20 procedure was by definition confidential, he saw no reason why the Committee should not have access in all such cases to any relevant reports by the subcommittee.

8. He felt, however, that no one could be opposed in principle to the optional protocol. Despite any disagreement on detail, therefore, he thought it essential for the Committee to express an opinion to the Economic and Social Council, which in any case must take a decision on the matter whether the Committee voiced a view or not.

9. Mr. SORENSEN observed that the views in support of having two committees on torture had been set out, inter alia, in a paper circulated to members of the Committee.

10. On a minor point, he felt that article 7, paragraph 3, of the draft optional protocol should contain a reference to the subcommittee's working language on mission; in his view, there should be only one, since a multilingual delegation in the field might arouse confusion and mistrust. There was also very much to be said for working on a regional basis, so he felt that a system of regionality, too, should be reflected in article 7. In that connection, he thought that a mission consisting of nationals of neighbouring States would in general be received with more confidence, in the country concerned, than one containing nationals of distant States, possibility including former colonial Powers.

11. The question of confidentiality, on the other hand, was a major one. It was, of course, highly important that the Committee against Torture should be able to function in public, and the article 19 procedure enable it to do so; but it was equally important that a body such as the proposed subcommittee could work in camera. To combine the two requirements was not easy. He could support the text of article 15, which he had helped to prepare, but perhaps paragraph 1 of the article could be amended to provide that the subcommittee would submit to the Committee against Torture all reports published as well as

all unpublished reports in cases where the subcommittee wished a public statement to be made. In any case, the subcommittee would submit to the Committee annual reports containing details of all the countries visited.

12. On one occasion when the Committee had been considering a certain State party under the article 19 procedure, he had assured that State's representatives beforehand that, since he had been involved in confidential inquiries, he would not take the floor in any public discussion on the matter. In that way, a major difficulty had been avoided. But if a State party voiced similar concern in a case where the entire Committee membership had access to confidential information from the subcommittee, the Committee would be unable to discuss the matter in public, and both the Committee and the subcommittee would lose credibility.

13. Despite the problems raised, he too was wholeheartedly in favour of establishing an optional protocol.

14. Mr. EL-IBRASHI, referring to article 9, paragraph 1, of the draft optional protocol, asked what the role of an observer from the subcommittee on a regional mission would be. He also wondered whether States had entered reservations to the Convention as it stood would accede to the optional protocol, which went much further than the Convention itself.

15. Mr. BURNS, replying to Mr. El-Ibrashi's second question, said that it was always possible that a State that had entered reservations on article 20 of the Convention might be willing to accede to the optional protocol, although that would indeed be inconsistent. However, a State could always withdraw its reservations on article 20 at any time. A State acceding to the optional protocol would do so in full knowledge of the facts, including the relationship between the subcommittee and the Committee on confidential issues. It might be, however, that Mr. Sorensen's concerns would influence the Economic and Social Council and that a more limited scope would be given to the relations between the Committee and the subcommittee.

16. Mr. SORENSEN, replying to Mr. El-Ibrashi's first question, said that a visit to a country party to a regional convention would be made by the subcommittee only in very special circumstances. Only one such convention was in existence so far, namely, the European Convention for the Prevention of Torture. Without the provision in article 9, the need for European countries to accede to the optional protocol might be questioned. Hence the suggestion for an observer from the subcommittee to see how the regional convention was working and point out any shortcomings.

17. Mr. BEN AMMAR considered that an optional protocol would be beneficial since prevention was always better than cure. The optional protocol should be international rather than regional in scope, since the Committee had been informed that there were insufficient resources, in Africa for instance, to operate already existing structures. Moreover, a United Nations body would have more pestige than a regional body in certain regions, including Africa. Mr. Sorensen's cultural argument was not convincing: there were as many differences between African countries as between them and the countries of another continent.

18. Mr. SORENSEN explained that his idea had been regionalization within the United Nations. The proposed body would be a United Nations body.

19. Mr. EL-IBRASHI drew attention to article 8 of the draft optional protocol, which provided for regular missions by the subcommittee to States parties. Those missions would, however, be postponed if the State party concerned had agreed to a visit by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention. For how long would such a mission be postponed?

20. Mr. SORENSEN said that since the subcommittee would always meet in camera, and since the Committee dealt with matters under article 20 in camera, it could always inform the subcommittee of them, thus obviating the need for both bodies to visit a State party. Moreover, visits by the Committee pursuant to article 20 covered torture, whereas the subcommittee's visit would be concerned with torture and other cruel, inhuman or degrading treatment or punishment.

21. Mr. BURNS thought that, in practice, whether or not the visit by the subcommittee was carried out would depend on the content of the Committee's report. If that report covered the matters with which the subcommittee was concerned, the country would not be visited; if the Committee's report was deficient in some way, then the subcommittee would have jurisdiction to make its visit. Practice in such matters would no doubt develop over time.

22. After further discussion between Mr. BURNS and Mr. SORENSEN, the CHAIRMAN suggested that, since the members of the Committee were in favour of the principle of the optional protocol but still needed to clarify their views, Mr. Burns and Mr. Sorensen should prepare a short paper, in English only, for discussion at the next meeting but one.

23. It was so decided.

The meeting rose at 5 p.m.